

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

HINES BROTHERS
and TYRONE HINES
Respondents

Case Nos.: I-00-10253
I-00-10336

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. Introduction

On June 30, 2000, the Government served a Notice of Infraction (No. 00-10253) upon Respondents Hines Brothers and Tyrone Hines alleging a violation of 21 DCMR 502.1, which requires persons who undertake land disturbing activities to obtain a permit. The Notice of Infraction alleged that the violation occurred on June 27, 2000 at 3024 Otis Street, N.E., and sought a fine of \$500.00.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on July 26, 2000, this administrative court issued an order finding Respondents in default and assessing the statutory penalty of \$500.00 authorized by D.C. Code § 6-2704(a)(2)(A).

The Government then served a second Notice of Infraction (No. 00-10336) on August 8, 2000. Respondents also did not answer that Notice within twenty days of service. Accordingly, on November 8, 2000, a Final Notice of Default was issued, finding Respondents in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B). The Final Notice of Default also set December 13, 2000 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

Peter Nwangu, the inspector who issued the Notice of Infraction, appeared at the December 13 hearing on behalf of the Government. Respondents did not appear. Based upon the testimony at the hearing, my evaluation of the credibility of the Government's witness, the documents admitted into evidence and the entire record in this case, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

1. On June 27, 2000, Mr. Nwangu observed an excavation at 3024 Otis Street, N.E. A residence is located at that address. Mr. Nwangu took photographs of the site, which have been admitted into evidence as Petitioner's Exhibit 100 ("PX-100").
2. One of the construction workers at the site told Mr. Nwangu that interior renovations were being conducted at the site, along with the excavation work that Mr. Nwangu observed. Mr. Nwangu examined the building permit that was at the

site. It authorized the interior work, but did not grant permission for any work outside the building.

3. The worker at the site also told Mr. Nwangu that Hines Brothers was the general contractor for both the interior and exterior work. He told Mr. Nwangu that Hines Brothers' address was 2100 Vermont Avenue, N.W., Washington, D.C. 20001 and that Tyrone Hines was the person in charge of the job for Hines Brothers. He also gave Mr. Nwangu a telephone number for Mr. Hines.
4. Mr. Nwangu subsequently called Mr. Hines at the number given him by the worker. Mr. Hines confirmed that his company was doing both interior and exterior renovation work at 3024 Otis Street, N.E. Mr. Hines said that the excavation was for the purpose of constructing an exterior retaining wall. He also told Mr. Nwangu that he had obtained a building permit for the interior renovations, but not for the excavation or the building of the retaining wall. He told Mr. Nwangu that he would obtain a permit for the excavation promptly.
5. Mr. Nwangu checked the records at the Department of Consumer and Regulatory Affairs in November 2000, about six months after his conversation with Mr. Hines. At that time, no building permit had been issued authorizing the excavation or construction of a retaining wall at 3024 Otis Street, N.E.
6. Based upon the statements of the on-site worker and of Mr. Hines, I find that Respondents undertook the excavation depicted on PX-100. Based upon Mr. Hines' statement and Mr. Nwangu's testimony, I find that no building permit was issued authorizing the excavation observed by Mr. Nwangu on June 27, 2001.

7. The Notices of Infraction were served upon Respondents by certified mail at addressed to 2100 Vermont Avenue, N.W. on June 30, 2000 and August 8, 2000, as evidenced by the certificates of service signed by the Government's representative.
8. This administrative court's orders of July 28, 2000 and November 8, 2000 were mailed to Respondents at the Vermont Avenue address and have not been returned.
9. The preponderance of the evidence establishes that Respondents' last known business address was 2100 Vermont Avenue, N.W. Mail addressed to Respondents at that address has not been returned by the U.S. Postal Service. Moreover, the on-site worker identified the Vermont Avenue address as Respondents'. It is reasonable to expect that a worker will know his employer's address, and the worker's reliability is enhanced because he furnished an accurate telephone number for Respondents. Taken together, this evidence is sufficient to establish that 2100 Vermont Avenue, N.W. as Respondents' business address.
10. There is no evidence of any reason for Respondents' failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondent had adequate notice of both the charges and the hearing date as mandated by the Due Process Clause and by applicable statutes. Mailing of the Notices of Infraction and the hearing notices to Respondents' last known business address is sufficient notice. *Mennonite Board of Missions v. Adams*, 462 U.S.

791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

2. By failing to obtain a building permit authorizing their excavation at 3024 Otis Street, N.E., Respondents violated 21 DCMR 502.1, which requires such a permit whenever a person engages in land disturbing activity.
3. The Civil Infractions Fine Schedule authorizes a fine of \$500.00 for violations of §502.1, *see* 16 DCMR 3234.1(a), and I will impose a fine in that amount.
4. The Civil Infractions Act, D.C. Code §§ 6-2712(f) and 6-2715, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Code §§ 6-2704(a)(2)(A), 6-2712(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Code §§ 6-2704(a)(2)(B), 6-2712(f). Because Respondents introduced no evidence of their reasons for failing to answer the Notices of Infraction, there is no basis for concluding that they had good cause for that failure and no basis to suspend or reduce the statutory penalty of \$1,000.00.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____
day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **6-6-01**

John P. Dean
Administrative Judge